

Checklist For Life Insurance Products With An Accelerated Benefit Provision In The Case Of Terminal Or Chronic Illness

Note that all of the following requirements are in addition to those for the underlying life insurance product.

211 CMR 55.00 applies to all life insurance products with accelerated benefit provisions offered in Massachusetts on and after January 1, 2000. *211 CMR 55.01 and 55.02*

Cover Page

___ Limitations or exclusions must be highlighted on the first page of the policy, or there must be a highlighted cross-reference on the first page to the "limitations or exclusions" section of the policy. *211 CMR 55.06(2)(d)*

___ If a policy is convertible, a notice is to be on the first page that identifies that the policy is convertible. *211 CMR 55.06(2)(e)*

___ The carrier must prominently note the following, in substantially similar form and content, on either the face of the policy or rider, or on a sticker attached to the face of the policy or rider:

"Accelerated benefit payments from this policy may qualify for special tax status, if, according to federal definitions, the insured qualifies as terminally ill, or qualifies as chronically ill and uses the accelerated benefit to pay for costs incurred by the insured for qualified long-term care services provided for the insured during the chronic illness. However, if the accelerated benefit is based on "medical conditions" and not terminal or chronic illness as defined in the federal tax code, the benefits may be taxable. We recommend that you contact a tax advisor when making tax-related decisions about electing to receive and use benefits from an accelerated benefit product." *211 CMR 55.06(2)(f)*

Definitions

___ All terms used in the policy must be fully explained so that the policyholder or certificate holder understands his or her relationship to the benefits provided. *211 CMR 55.06(2)(a)*

Any of the following definitions in the policy must be substantially similar to those set forth in 211 CMR 55.04:

___ Activities of Daily Living: eating, toileting, transferring, bathing, dressing, and continence.

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___ Chronic Illness: a condition because of which an individual has been certified by a licensed health care practitioner as:

- (a) being unable to perform (without substantial assistance from another individual) at least two Activities of Daily Living for a period of at least 90 days due to a loss of functional capacity;
- (b) having a level of disability similar to the level of disability described above; or
- (c) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include conditions otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.

____ Licensed Health Care Practitioner: any physician (as defined in section 1861(r)(1) of the federal Social Security Act) and any registered professional nurse, licensed social worker or other individual who meets such requirements as may be prescribed by the federal Secretary of Health and Human Services, or as defined in the federal Health Insurance Portability and Accountability Act or any successor law or any regulation promulgated thereunder. The Licensed Health Care Practitioner must be acting within the scope of his or her license in the state of licensure when providing covered services or performing actions required by the contract.

____ Policy holder: the named insured under a life insurance policy or the owner of the policy if not the named insured;

(a) in the case of a group life insurance policy, the group life insurance certificate holder.

____ Qualified Long-Term Care Services: the necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

____ Special Benefits: benefits including, but not limited to:

(a) the acceleration of the death benefit in life insurance policies, as well as payments made over and above the accelerated benefit for expenses incurred for Qualified Long-Term Care Services in policies providing benefits for conditions of Chronic Illness only.

Note: the Division does not have a list of additional acceptable "special benefits." Any "special benefits" will be reviewed on a case-by-case basis. As filings are reviewed under this regulation, a list will be developed. In the meantime, all such benefits must be, at a minimum, actuarially supported, i.e., the benefits must be reasonable in relation to the premium charged.

____ Terminal Illness: a condition that a physician certifies will reasonably be expected to result in a drastically limited life span as specified in the contract, for example, twenty-four (24) months or less.

____ Total and Permanent Disability: any of the following conditions as specified in the policy:

(a) terminal illness, as defined in 211 CMR 55.04;

(b) chronic illness, as defined in 211 CMR 55.04;

(c) a medical condition, including but not limited to one of the following specifically named or described conditions, which the insured's physician certifies has required or will require extraordinary medical intervention without which the insured would have died, or will die:

1. Acquired Immune Deficiency Syndrome;

2. Coronary artery disease resulting in acute infarction or requiring surgery;

3. End-Stage Renal Disease;

4. Major organ transplant;

5. Medical condition requiring continuous life support; or

6. Permanent neurological deficit resulting from cerebral vascular accident; or

(d) other qualifying conditions that meet the definition in (c) above and that are approved by the Commissioner for any particular filing. *Note: at this time, the only other qualifying condition that has been approved is "life-threatening cancer" that is specifically defined in the policy. Any additional conditions should be carefully reviewed to compare the definition with those above and to make sure that the definitions are clear enough that consumers are not misled.*

Minimum Standards

- ___ Carriers may exclude benefits under an accelerated death benefit product based upon the occurrence of a condition or disease which is specifically excluded from the underlying life insurance policy. *211 CMR 55.05(1)*
- ___ Life insurance policies with accelerated benefit provisions may not contain any pre-existing condition exclusion provisions; nor may such products contain an incontestability clause which differs in duration or, if not added after issuance of the underlying policy, has an effective date different from any such clause contained in the total and permanent disability provision, if any, of the underlying life insurance policy or annuity contract. *211 CMR 55.05(2)*
- ___ A carrier may require that reasonable additional evidence be provided that the insured is totally and permanently disabled as defined in 211 CMR 55.04. *211 CMR 55.05(3)(a)*
 - ___ For the purposes of 211 CMR 55.05(3)(a), "reasonable additional evidence" means:
 1. additional certification at the carrier's expense, by a physician, or, at the option of the carrier in the case of a Chronic Illness, by a licensed health care practitioner, who is not a member of the policyholder's or insured's immediate family and who is not associated with or in any way affiliated with the provider rendering the services in question;
 2. a finding by the Social Security Administration entitling the insured to disability benefits;
 3. a finding of eligibility of total and permanent disability by an Industrial Accident Board or similar agency under a worker's compensation system; or
 4. a disability determination enabling an insured to make an early withdrawal from an individual retirement account or similar instrument without penalty from the Internal Revenue Service; or
 5. any other evidence approved by the commissioner. *Note: at this time, no other policy language has been approved under this provision.*
- ___ The accelerated benefit provision for qualifying events due to accidental injury must be effective on the effective date of the policy or rider. The accelerated benefit provision in the case of qualifying events not due to accidental injury must be effective no more than 30 days following the effective date of the policy or rider unless the insured has chosen an elimination period or deductible amount for policies providing accelerated benefits for conditions for chronic illness only. *211 CMR 55.05(4)*
- ___ The policy must specify all possible payment options. *211 CMR 55.05(5)(a)*
- ___ A policyholder may not be required to specify which type of option to exercise until the time of a qualifying event, except in cases that the individual qualifies for benefits only because of chronic illness, or in cases when the policy provides benefits only for chronic illness. *211 CMR 55.05(5)(b)*
- ___ The carrier must give the policyholder the option to receive the full amount of the accelerated benefit available as a lump sum, in addition to any other methods of payment offered except in cases that the individual qualifies for benefits because of chronic illness only, or in cases when the policy provides benefits for chronic illness only. *211 CMR 55.05(5)(c)*
- ___ Carriers may not make the benefit available as an annuity contingent upon the life of the insured. *211 CMR 55.05(5)(d)*
- ___ A carrier offering policies providing benefits for conditions of chronic illness only may also provide special benefits over and above the accelerated benefits to be payable for expenses incurred for qualified long-term care services. *211 CMR 55.05(6). Note: the Division does not have a list of additional acceptable "special benefits." Any "special benefits" will be reviewed on a case-by-case basis. As filings are reviewed under this regulation, a list will be developed.*

- ___ A carrier may not restrict the use of accelerated benefits in any way; nor may any carrier attempt to recoup all or any portion of benefits paid out under an accelerated benefit product, except in contestable cases of material misrepresentation, fraud or criminal misconduct. *211 CMR 55.05(7)(a) but note:*
- ___ In cases that the individual qualifies for benefits because of chronic illness only, the benefit amount must be payable only for expenses incurred for qualified long-term care services. *211 CMR 55.05(7)(b)*
- Note: Any provision that caps the amount subject to early withdrawal (i.e., less than than the full amount) will be reviewed to consider the relation of the premium charged to the benefit provided.*
- ___ The policy must contain a provision that states that if a policyholder elects to accelerate the full amount of the death benefit, whether as a lump sum or in periodic payments, future premium payments on the underlying life insurance policy will be waived, without the inclusion of a waiver of premium rider. *211 CMR 55.05(8)(a) but note:*
- ___ Carriers are not required to waive future premium payments on the remaining in-force life insurance policy if a policyholder accelerates any amount less than the full amount of the death benefit, whether as a lump sum or in periodic payments, unless the policy already contains a waiver of premium provision that applies. *211 CMR 55.05(8)(b)*
- ___ The policy must contain a provision that states that when an accelerated benefit is payable, there may be no more than a pro-rata reduction in the cash value based on the percentage of the death benefit accelerated to produce the accelerated benefit payment. *211 CMR 55.05(10)(a); or*
- ___ The payment of accelerated benefits, and any reasonable administrative expense charges, any future premiums and any accrued interest may be considered a lien against the death benefit of the underlying policy or rider, and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional policy loans may be limited to any excess of the cash value over the sum of the lien and any other outstanding policy loans. *211 CMR 55.05(10)(b)*
- ___ The policy must contain a provision that states that if and when an accelerated benefit payment causes a pro rata reduction in the cash value of the underlying insurance policy, at the option of the policyholder, the payment may first be applied toward repaying all or a portion of any outstanding policy loan. *211 CMR 55.05(11)*
- ___ The policy must contain a provision that states that if there is no additional premium payment, the death benefit may not be reduced by more than the amount of the accelerated benefits paid adjusted for any applicable actuarial discount, accrued interest appropriate to the policy design, or for any reasonable administrative expense charge. *211 CMR 55.05(12)*
- ___ Does the policy have an accidental death benefit?
- ___ yes ___ no
- If yes, the policy must have the following provision:
- ___ If any death benefit remains after payment of accelerated benefits, the accidental death benefit provision in the underlying policy may not be affected by the payment of any accelerated benefits. *211 CMR 55.05(13)(a)*
- ___ If no death benefit remains, the accidental death benefit provision, if any, in the underlying policy will have no effect. *211 CMR 55.05(13)(b)*
- ___ The policy must contain a provision that states that when a policyholder makes a claim for the lump sum payment of accelerated benefits, the carrier is required to issue a new or amended schedule page to reflect any new, reduced in-force face amount of the underlying life insurance policy, and any effect on the accumulation account, cash value, loan balance and future premiums.
- ___ Group carriers paying such claims may substitute an equivalent Explanation of Benefits statement for delivery to the group certificateholder.

___Note: this does not apply to policies providing benefits for conditions of Chronic Illness only and those policies using the lien method described in 211 CMR 55.05(10)(b). *211 CMR 55.06(3)(c)*

___The policy must contain a provision that states that if the accelerated benefit is paid in periodic payments instead of a lump sum, and the policy's underlying contract values change with each payment, each time an accelerated benefit payment is made, the carrier is required to send to the policyholder a statement containing the underlying contract values. *211 CMR 55.06(4)*

___Is this a group product?

___yes ___no

If yes, does the policy offer conversion?

___yes ___no

___If yes, the policy must specify the benefits to be provided or must state that the converted coverage will be on the policy form then being issued by the company for this purpose. *211 CMR 55.06(2)(f)*

___If the policy uses age as a determining factor for reducing the benefits made available in the policy as originally issued, the policy must prominently state that this is the case. *211 CMR 55.06(2)(g)*

___If the policy is issued on a basis other than that applied for, a disclosure statement properly describing the policy must accompany the policy when it is delivered and contain the following statement, in no less than 14-point type, immediately above the company name: "NOTICE: Read this disclosure statement carefully. The coverage you originally applied for has not been issued. This policy is therefore not identical to the coverage you requested - it differs in the following respects: [list];" *211 CMR 55.06(2)(h)*

___Riders or endorsements that provide a benefit for which a specific premium is charged must show the premium on the application, rider, or elsewhere in the policy. *211 CMR 55.06(2)(i)*

___Any rider that reduces benefits requires a signed acceptance by the policyholder or certificateholder unless such coverage is provided under a master policy owned by an employer or trade union. *211 CMR 55.06(2)(j)*

___The policy must contain a provision that states that prior to the addition of an accelerated benefit product to an existing life insurance policy and prior to the payment of any accelerated benefit to the policyholder or non-group policy owner, the carrier will notify any assignee or irrevocable beneficiary in writing, at his or her last known address, of any present or future effect on the rights of such third parties under the life insurance policy, and may require a signed acknowledgment of concurrence before paying accelerated benefits. *211 CMR 55.06(2)(k)*

___No misleading policy names may be used. *211 CMR 55.06(2)(b)*

___The term "accelerated benefit" must be included in the description, and the term "long-term care insurance" may not be used in describing or marketing accelerated benefit products. *211 CMR 55.06(2)(c)*

Disclosures

___ Carriers offering accelerated benefit products must file a disclosure statement that is to be provided to the applicant at the time application is made or by separate communication with receipt or certification of delivery. *211 CMR 55.06(1)(a), 211 CMR 55.06(1)(c), 211 CMR 55.06(2)*, Required language: *211 CMR 55.100*.

___ Carriers offering accelerated benefit products must file a disclosure statement that is to be provided to the applicant upon the insurer's receipt of a request for benefits. *211 CMR 55.06(1)(b), 211 CMR 55.06(1)(c), 211 CMR 55.06(2), 211 CMR 55.06(3)*, Required language: *211 CMR 55.110*.

Note: For policies that do not provide benefits in the case of chronic illness, carriers may omit from the disclosure statements all references to chronic illness. 211 CMR 55.06(1)(c)

Actuarial Memorandum

Note: These requirements are in addition to the requirements for the underlying product.

___ Is there an additional premium for the accelerated benefit?

___ yes ___ no

If yes,

___ carrier must include support for the charge in its actuarial memorandum. *211 CMR 55.05(9)(b)*

___ When benefits are intended to be provided through the acceleration of benefits, policy reserves shall be determined in accordance with the Standard Valuation Law. *211 CMR 55.05(14)(a)*

___ All valuation assumptions used in constructing the reserves must be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. *211 CMR 55.05(14)(b)*

___ Mortality tables and interest rates currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the policy form. *211 CMR 55.05(14)(b)1.*

___ The actuary must follow both actuarial standards and certification for good and sufficient reserves. *211 CMR 55.05(14)(b) 2.*

___ Reserves in the aggregate must be sufficient to cover:

___ policies upon which no claim has yet arisen, as well as

___ policies upon which an accelerated claim has arisen. *211 CMR 55.05(14)(b) 3.*

Exemption from Reserves. No additional reserves need to be established for the following products:

___ For policies which provide actuarially equivalent benefits with or without an option to accelerate death benefits. *211 CMR 55.05(15)(a)*

___ For group insurance policies which provide accelerated death benefits without a separate premium charge and which are experience-rated. *211 CMR 55.05(15)(b)*